

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

IN THE UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

77-2153

VINCENT YANNI,
Plaintiff,
Appellant,

Vs.

UNITED STATES OF AMERICA
Defendant,
Appellee.

----- X

Motion to Vacate Pursuant to
28 U.S.C. 2255 (Habeas Corpus)

Crim. No. 72-CR-810

Civil No. 77-2264, E.W.

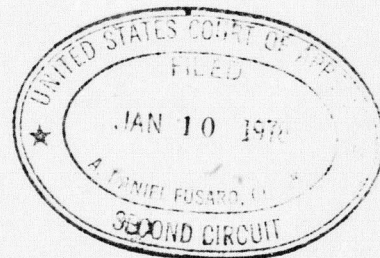
Opinion 46599

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPEAL BRIEF

and appendix



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POINTS AND AUTHORITIES

Law or Constitution
of the Second Circuit

(T)he right to have the Assistance of Counsel for (h)is defence is to be interpreted that (T)he trial judge shall see that the defendant is fully advised of the facts (risks and disabilities) underlying the potential conflict and is given an opportunity to express (h)is or (h)er views.

18 U.S.C. 3006 A (b); Amend. 5; Amend 6.

In the Opinion that will be rendered by this Circuit Court it should not now be necessary to mention Salen, Fasulo, Prussian, McBoyle, and Smith, because doubt no longer exists and nver did exist.

STATEMENT OF THE CASE

The Appellant, Vincent Yanni, and his co-defendant were represented by the same counsel. The Appellant was not informed or requested by the trial court to waive his 6th Amendment right to the Assistance of Counsel on the question that a conflict of interest may arise from joint representation. The Appellant was not given an opportunity to express his views by the trial judge on the facts underlying a potential conflict of interest. The Government, itself, made a positive and firm statement that a conflict of interest was present (See attached transcript pages 16, 17, of the Pre-Trial Hearing of June 7, 1972. See also attached transcript page, 18, of the Pre-Trial Hearing of May 30, 1972).

Since the trial judge permitted the trial to proceed without allowing or requesting the Appellant to express his (Appellant's) views or asking the Appellant to waive his 6th Amendment right to the Assistance of Counsel on the question of a conflict of interest, and since the trial judge realized that a conflict of interest was more than a possibility (See attached transcript pages), the trial judge's actions can only be construed as a Court Order requiring that one lawyer shall simultaneously represent conflicting interests.

STATEMENT OF LAW IN FACT

A conviction cannot stand where a Defendant jointly represented by counsel has neither been given an opportunity to express his views on the facts underlying a potential conflict of interest by joint representation nor has on the Record made an intelligent (knowing) and competent (understanding) waiver of his 6th Amendment right to the Assistance of Counsel on the question of a potential conflict of interest by joint representation, because it violates the Laws of Congress, Statutes, (Art. I & 18 U.S.C. 3006A (b)), raises doubt or conflict in the Constitutional (Art. III) Construction of the statutes, denies 'due process' in violation of Amend. 5 into Amend. 6, and vio-

lates the supreme Law of the Land (Art. VI).

A MATTER OF LAW

Criminal statutes and rules must be given strict construction in favor of defendants where substantial rights (Amend. 6 expressly says, 'In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for (h)is defence....' Emphasis here added.) are involved (5th Amend.). See and compare: Smith v. United States, Ala. 1959, 79 S.Ct. 991, 360 U.S. 1, 3 L.Ed.2d 1041.

The criminal statutes are to be strictly construed and a strained construction of the language should not be used, United States v. Salen (Wisdom), 235 U.S. 237, 35 S.Ct. 51, 59 L.Ed. 210; Fasulo (Knowledge) v. United States, 272 U.S. 620, 47 S.Ct. 200, 71 L.Ed. 443, and 18 U.S.C. 3006A (b) expressly says, '(T)he court shall appoint separate counsel for defendants who have such conflicting interests that they cannot properly be represented by the same counsel *** .' Emphasis here added for interpretive purposes.

If there were any doubt or conflict in the interpretation (Constitutional Construction) of, '(T)he court shall appoint separate counsel for defendants who have such conflicting interests that they cannot properly be represented by the same counsel ***' it must be resolved in favor of the accused citizen (Amend. 6, 'the accused shall enjoy the right...to have the Assistance of Counsel for (h)is defence....'), Prussian (Statute Construction) (Understanding) v. United States, 282 U.S. 675, 51 S.Ct. 223, 75 L.Ed. 610 (1931); McBoyle v. United States (The Evolution of Law) (Truth), 283 U.S. 25, 27, 51 S.Ct. 340, 75 L.Ed. 816 (1931).

PROPOSITION

(T)he is to be interpreted that (T)he Assistance of Counsel guaranteed by the Sixth Amendment contemplates that such ((h)is) assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests. See and compare: Lollar v. United States, 376 F.2d 243 at 244 (D.C. App., 1967); Glasser v. United States, 315 U.S. 60, 70, 62 S.Ct. 457, 465, 86 L.Ed. 680 (1942), and if there were any doubt or conflict in the interpretation of the statutes, it must be resolved in favor of the accused citizen, Prussiar, supra; McBoyle, supra.

(T)he is to be interpreted that (T)he trial judge has the responsibility to assure that co-defendant's ((h)is) decision to proceed with one attorney is an informed (intelligent (knowing) and competent (understanding)). See and compare: Lollar, supra, at 244; Campbell v. United States, 122 U.S.App.D.C. 143 at 145, 352 F.2d 359 at 361, and if there were any doubt or conflict in the interpretation of the statutes, it must be resolved in favor of the accused citizen, Prussian, supra; McBoyle, supra.

(T)he is to be interpreted that (T)he trial court has the responsibility and/or duty of seeing that the trial is conducted with solicitude for the essential rights of the accused ((h)is). See and compare: Lollar, supra, at 245; Glasser v. United States, supra, 315 U.S. at 70, 62 S.Ct. at 465, and if there were any doubt or conflict in the interpretation of the statutes, it must be resolved in favor of the accused, Prussian, supra, McBoyle, supra.

(T)he is to be interpreted that (T)he trial court should protect the right of an accused to have the ((h)is) assistance of counsel, and it would be fitting and appropriate for that determination (an intelligent (knowing) and competent (understanding) waiver) to appear on the record. See and compare: Lollar, supra, at 245; Johnson v. Zerbst, 304 U.S. 458, 465, 58 S.Ct. 1019, 82 L.Ed. 1461 (1937), and if there were any doubt or conflict in the interpretation of the statutes, it must

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be resolved in favor of the accused citizen, Prussian, supra; McBoyle, supra.

(T)he is to be interpreted that (T)he trial judge should see that the defendant is fully advised of the facts underlying the potential conflict and is given an opportunity to express ((h)is) his or ((h)is) her views. See and compare: United States v. Carrigan, 543 F.2d 1053 at 1055 (2nd Cir., 1976); United States v. Mari, 526 F.2d 117, 119 (2nd Cir., 1975) cert. denied, 429 U.S. 941 (1976); United States v. DeBerry, 487 F.2d 448, 452 (2nd Cir., 1973), and if there were any doubt or conflict in the interpretation of the statutes, it must be resolved in favor of the accused citizen, Prussian, supra; McBoyle, supra.

(T)he is to be interpreted that (T)he right to have the ((h)is) assistance of counsel is too fundamental and absolute to allow the courts to indulge in nice calculations as to the amount of prejudice arising from its denial. See and compare: Lollar, supra, at 246; Glasser, supra, 315 U.S. at 76, 62 S.Ct. at 467, and if there were any doubt or conflict in the interpretation of the statutes, it must be resolved in favor of the accused citizen, Prussian, supra; McBoyle, supra.

Whereas: (T)he is to be interpreted that (T)he trial judge has made sure (responsibility and/or duty) that the defendant is fully advised of the facts underlying the potential conflict and is given an opportunity to express his views in court on and for the Record, and that if the defendant still wishes to proceed at trial with joint representation, the trial judge shall make sure that the defendant has intelligently (knowingly) and competently (understandingly) waived his right to the Assistance of Counsel on the question of a potential conflict of interest, and this waiver should appear on the Record (Recorded Fact) to satisfy procedural 'due process' guaranteed under the Sixth Amendment of the Constitution of the United States of America, Lollar, supra, at 243, 244, 245, 246; Glasser, supra, at 457, 465, 467; Campbell, supra, at 361; Johnson v. Zerbst, supra, at 458, 465; Carrigan, supra, at 1055; Mari, supra, 117, 119;

PROPOSITION CON'T

DeBerry, supra, 448, 452, and if there were any doubt or conflict in the interpretation of the statutes, it must be resolved in favor of the accused citizen, Prussian, supra; McBoyle, supra.

Wherefore: As a Matter of Law in Fact and/or Truth, a conviction cannot stand where a defendant has not been fully advised by the trial judge of the facts underlying the potential conflict, and has not been given an opportunity to express his views in court, and where the defendant has not intelligently and competently waived his right to the Assistance of Counsel on the Record on the question of a possible conflict of interest arising from joint representation, because it violates the Laws of Congress, Statutes (Art. I & 18 U.S.C. 3006A (b)), raises doubt and conflict in the Constitutional (Art. III) Construction of the statutes, denies 'due process' of law (5th Amend. into the 6th Amend.), and violates the supreme Law of the Land (Art. VI).

SUMMARY

Fully advised by the trial judge is fully advised by the trial judge. To express his views in court on and for the Record is to express his views in court on and for the Record. Intelligent (knowing) and competent (understanding) is intelligent (knowing) and competent (understanding). A waiver is a waiver. In the Record is in the Record.

Wherefore: The Appellant prays that his conviction be reversed and his sentence be vacated.

Respectfully submitted,

Vincent Yanni
Vincent Yanni

ARGUMENT

The simple fact that joint representation in itself raises the question of a conflict of interest and prejudice would conclusively show that opinions trying to prove or disprove prejudice from joint representation are highly arguable. It is doubtful that anyone can prove or disprove the total scope of prejudice that may arise from joint representation. No one can possibly see how trial strategy may be effected or even guess as to how much the defendant's/^{representation}((h)is) has been narrowed or hampered. No lawyer can state that joint representation causes no problems, and it has been shown at times that some lawyers put their own interests ahead of their clients. (T)he right to have the assistance of ((h)is) counsel is too fundamental and absolute to indulge in nice calculations as to the amount of prejudice arising from its denial. Cf. Snyder v. Massachusetts, 291 U.S. 97, 116, 78 L.Ed. 674, 683, 54 S.Ct. 330; Tumey v. Ohio, 273 U.S. 510, 535, 71 L.Ed. 749, 759, 47 S.Ct. 437; Patton v. United States, 281 U.S. 276, 292, 74 L.Ed. 854, 860, 50 S.Ct. at 253; McCandless v. United States, 298 U.S. 342, 347, 80 L.Ed. 1205, 1208, 56 S.Ct. at 764. In conspiracy cases, where the liberal rules of evidence and the wide latitude accorded the prosecution may, and sometimes do, operate unfairly against an individual defendant, it is especially important the he be given the benefit of the undivided assistance of ((h)is) counsel without the courts becoming a party to encumbering that ((h)is) assistance. Here (Yanni) the trial judge was advised by the Government that a conflict of interest was present (see attached transcript pages).

ARGUMENT CON'T

The argument presented by the Government and the District Court that no prejudice was shown in Mr. Yanni's case must now be put aside, because any argument debating prejudice would conflict with interpretive facts (law) laid by the Law of the Land (supreme Court), and these interpretive facts (law) are supported by a Law of Congress, 18 U.S.C. 3006A (b) (a statute). With the interpretive facts (law) fully supporting statute construction, the arguments concerning prejudice have been barred by the Constitution ('due process', supreme Court, Law of the Land, etc., etc., etc.), Prussian, supra; McBoyle, supra.

The Record (over 3000 pages) in the instant case (Yanni) will be searched in vain to find a single utterance by the Defendant (Yanni) expressing (h)is views (informed decision) on the question of a conflict of interest, and the Defendant was certainly not advised by the trial judge of the risks and the disabilities inhering in joint representation (the facts underlying the potential conflict). Since the Defendant uttered not a single view and was not fully advised of the facts (risks and disabilities) underlying the potential conflict, the Law (Constitution) of the Second Circuit was fully abrogated, because

(T)he is to be interpreted that (the trial judge should see that the defendant is fully advised of the facts underlying the potential conflict and is given an opportunity to express (h)is or (h)er views. 18 U.S.C. 3006A (b), 5th Amend., 6th Amend.

The Defendant is not a lawyer and absent being fully advised, he is certainly not capable of deciding an issue as intricate as a conflict of interest. The Defendant also suffers from seizures as borne out in the opinion entered 11-29-77 by the Honorable Judge Edward Weinfeld (See Opinion, page 12).

ARGUMENT CON'T

Where two or more defendants are represented by single counsel, the district court has the duty to ascertain whether each has an awareness of that ((h)is) course and nevertheless has knowingly chosen it, Campbell v. United States, 352 F.2d at 359 (D.C. App., 1965); 18 U.S.C. 3006A (b); Amend. 5; Amend. 6.

In this case (Yanni), it certainly cannot be presumed that a waiver occurred especially in the light of the fact (law) that nothing resembling a competent waiver appears on the Record. In some cases, the terms intelligent and competent in reference to a waiver can be taken to the point of debate, but in this case (Yanni), there is nothing on the Record to debate, unless, the Government would have us believe that the trial judge was a mystic and conferred with the Defendant by means of telepathy. If this is the Government's position, Orwell's 1984 can be proven by this case (Yanni).

The District Court in its opinion of 11-29-77 mostly argues events that transpired during the trial, when in fact (law), the denial of the right to the effective assistance of ((h)is) counsel had already taken place in Pre-Trial Hearings. Since this denial had taken place in Pre-Trial Hearings, it is extremely doubtful that the trial court had jurisdiction to conduct and proceed with the trial, and a judgment of conviction of one who did not effectively waive (h)is constitutional right to the Assistance of Counsel for (h)is (d)efence is void as having been rendered without jurisdiction, Johnson v. Zerbst, 304 U.S. 458.

It is up to the Government to prove that jurisdiction exists, and this the Government cannot do, because 18U.S.C. 3006A (b), Art. I, Art.III, Amend. 5 & 6, Fasulo, Salen, Prussian, McBoyle, or Art. VI. The Defendant has been denied 'due process' by the trial court, and the Defendant's case will never become

ARGUMENT CON'T

'res judicata' because his case now challenges jurisdiction.

The Appellant (Yanni) is restrained of (h)is liberty illegally in violation of the Constitution of the United States of America.

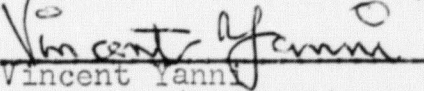
As a Matter of Law in Fact, all positions must now be brought in, and all positions fall as a Matter of Law in Fact, except those positions supporting the Appellant (Yanni). The Governemnt cannot now cite (fact) into the Proposition, because any cite (fact) would be mis-applied as a Matter of Law in Fact, and since the Government cannot have a position (jurisdiction) as a Matter of Law in Fact, and since the Government no longer has a position (jurisdiction or right to argue) in the instant case as a Matter of Fact in Law, their (Government's) position (jurisdiction) cannot be argued or defended at Law, and as a general proposition, of course, claims based upon Constitutional errors and/or jurisdiction are not barred from collateral or direct attack in a Motion to Vacate pursuant to 28 U.S.C. 2255 (Habeas Corpus or Yanni, Plaintiff, Appellant v. United States of America, Defendant, Appellee.), Sunal v. Large, 332 U.S. 174, 67 S.Ct. 1588, 91 L.Ed. 1982 (1947); Bowden v. Johnston, 306 U.S. 19, 59 S.Ct. 442, 83 L.Ed. 455 (1939); Davis v. United States, 417 U.S. 333, 94 S.Ct. 2298, 41 L.Ed. 109 (1974).

PROCEDURE OF LAW IN FACT

In a situation where co-defendant's (two or more citizens) have retained the same counsel or have been appointed the same counsel by the trial court, the trial court shall advise the defendant fully of the facts (risks and disabilities), and shall allow the defendant to express (h)is views on the facts underlying the potential conflict.

This Procedure shall appear on the Record as Recorded Fact (a waiver).
The trial court shall also inform the defendant that he may proceed with joint representation, but if it is (h)is choice to proceed with the same counsel at trial, the dfendant shall waive (h)is right under the Sixth Amendment to the Assistance of Counsel on the question of the potential conflict, and this Fact (a waiver) shall appear on the court Record.

Respectfully submitted,


Vincent Yanni

Reg. No. 80452-158
Pembroke Station
Danbury, Ct. 06810

IN THE UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

VINCENT YANNI,
Plaintiff,
Appellant,

v.

UNITED STATES OF AMERICA,
Defendant,
Appellee.

In Re: Motion to Vacate pursuant to
28 U.S.C. 2255 (Habeas Corpus)

Crim No. 72 CR 810
Civil No. 77-2264, EW

PETITION FOR BAIL

PETITION

I, Vincent Yanni, the Appellant in the Motion to Vacate, respectfully petition this Honorable Court to place the Petitioner on recognizance pending litigation in the Motion to Vacate.

AFFIDAVIT

In the peculiar totality of the circumstances surrounding this specific cause, the Petitioner (Appellant) firmly believes and therefore says that he is restrained of his liberty illegally in violation of the Constitution of the United States of America, and ought to be placed on recognizance pending litigation in the Motion to Vacate pursuant to 28 U.S.C. 2255 (Habeas Corpus) in the interest of justice and fundamental fairness (fair play). See and compare: Rule 49, supreme Court Rules. See also Appeal Brief.

Wherefore: The Petitioner (Appellant) prays that he be placed on recognizance pendente lite.

Respectfully,
Vincent Yanni
Vincent Yanni

IN THE UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

VINCENT YANNI,
Plaintiff,
Appellant,

v.

UNITED STATES OF AMERICA,
Defendant,
Appellee.

In Re: Motion to Vacate pursuant to
28 U.S.C. 2255 (Habeas Corpus)

Crim. No. 72 CR 810
Civil No. 77-2264, EW

In Re: Petition for Bail
Appeal Brief

CERTIFICATE OF SERVICE

AFFIDAVIT

I, Vincent Yanni, the Appellant in pro se in the Motion to Vacate and the Petitioner in the Petition for Bail, depose and say that I have served four (4) copies of the Appeal Brief in the Motion to Vacate with four (4) copies of the Petition for Bail on the Office of the Clerk, United States Court of Appeals for the Second Circuit, United States Courthouse, Foley Square, New York, New York 10007; that I have served a copy of the aforementioned on the Office of the United States Attorney, Southern District of New York, United States Courthouse, Foley Square, New York, New York 10007 by mail from the Federal Correctional Institution, Danbury, Ct. 06810 on this _____ day of December, 1977.

State of Connecticut

County of Fairfield

Vincent Yanni
Vincent Yanni

Vincent Yanni, being first duly sworn under oath, states that the information in the above Affidavit is true and correct.

Vincent Yanni
Vincent Yanni

Subscribed and sworn to me this 8th day of Dec., 1977

Notary Public:

John R. Gonzalez
NOTARY PUBLIC
COMMISSION EXPIRES 12/31/78

JUNE 7, 1972

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2 Since I am sort of like you, I am not terribly thrilled
3 to hear about the August 16th date -- you were here and you
4 heard what I said -- I am going to try, however, as you
5 are apparently willing to do, if everybody else wants to do
6 I am going to try to make that date.

7 On the other hand, I understand you and I would
8 like to think about just what you say. As a matter of fact
9 I have already been thinking about it.

10 Given the number of defendants in this case
11 and from my cursory reading of the number and substance
12 of the counts here in this indictment, I think I would
13 like to think about just what you are saying on my own
14 motion even if you hadn't raised it. But you have raised
15 it and good enough for you. It will be my duty to advise
16 you of how I think we should proceed along this line.

17 MR. SCHMUKLER: Thank you, your Honor.

18 THE COURT: All right, gentlemen.

19 * MR. WALKER: Your Honor, there is one further
20 point that I would like to take up with the Court.

21 It is the government's view that there could
22 be and there will be, in fact, at trial a conflict of interest
23 or a potential conflict of interest between every defendant
24 on trial here and, therefore, the government would ask
25 this court to look into the matter of having separate counsels

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2 for each defendant.

3 As matters presently stand we have Mr. Richman
4 representing four different defendants and we have Mr.
5 Kramer representing two defendants, Mr. Alperin representing
6 two defendants and Mr. Silverman or Mr. Page representing
7 two defendants.

8 * It would be the government's application to
9 ask the Court to direct these counsel to secure other counsel
10 for those defendants who they do not wish to represent
11 at trial and that every defendant be represented by one
12 counsel at trial.

13 THE COURT: Is this the first time this has
14 come up?

15 MR. WALKER: No, it was raised last week
16 before Judge Palmieri and he said to save it.

17 THE COURT: That was a Solomonic decision if
18 I ever heard one.

19 There is a defendant Horace Marble. I don't
20 see anybody jotted down.

21 MR. ANOLIK: It is Sam Siegel.

22 MR. SCHMUKLER: I don't know that that is the
23 fact or not. It has been said in court that he is repre-
24 senting him, but I don't know.

25 THE COURT: How about Thaddues Byrd, who

JUNE, 7, 1972

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2 represents him?

3 MR. WALKER: I don't know. To my understanding,
4 alias Frank, alias Alex, alias Benny, Alex Marble are
5 not going to be tried at present, either because they are
6 fugitives or because they are going to do something else.
7 I don't know.

8 * THE COURT: Gentlemen, the government represents
9 that there will be a conflict of interest between all
10 defendants and if that is the representation, I think give
11 the state of the law we are going to have to ask these
12 defendants to get separate counsel.

13 MR. RICHMAN: If the Court pleases, with respect
14 to that particular decision, I believe that is a decision,
15 one, the attorney himself must make and, two, if the
16 defendants themselves choose to go forward feeling there is
17 no conflict and insist there is no conflict then they
18 may choose that method.

19 One further point --

20 THE COURT: That makes a lot of sense if we
21 were left to our own devices, but I think greater minds
22 than mine, certainly, and perhaps even if you don't mind
23 my saying so yours, have apparently declined otherwise
24 as I read some of these great cases.

25 In other words, what I am trying to say is I am

JUNE 7, 1972

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2 afraid that this is one more thing where the judge is
3 an insurer for all concerned.

4 MR. RICHMAN: In other words, is your Honor
5 suggesting the government, namely, the United States
6 Attorney, can decide which --

7 THE COURT: No. I think that is perhaps a bit
8 of an over-statement and I think Mr. Walker would agree.
9 In other words, I don't think we can go quite that far.

10 However, somewhere along the line we have got
11 to have a determination, because I don't know all the facts
12 and I would presume it outrageous if I knew all the facts
13 at this point then I should not be the judge.

14 I think what we are going to have to do giving
15 the idiosyncratic demands of the American legal system is
16 to postpone any consideration of this now partly because
17 of the reason you so rightly suggested, in my view.
18 We can't make the government make that determination
19 unilaterally and I don't think Mr. Walker wants to.

20 * However, we do have the representation from the
21 government lawyer who knows presumably best of all what the
22 evidence is going to be that there may well be a conflict.

23 I would think that we will probably have to have
24 another session to make sure about that.

25 MR. RICHMAN: If your Honor please, the first

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Mr. Silverman is handling it for him. And the Bobick firm represents two defendants and they are not here today.

MR. J. BARK: Mr. Bobick called me and I said that I would let him know what I occurred.

MR. J. BARK: I understood that his firm is representing two defendants in this case, and I think that the question of a conflict of interest should be resolved.

THE COURT: Yes. And the four clients represented by one lawyer, that should be resolved too. I am amazed that in a case of this kind one lawyer can represent four defendants.

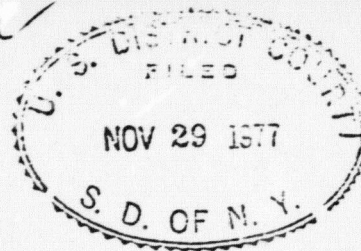
* MR. J. BARK: I believe there is a serious conflict, your Honor.

THE COURT: How believe there is?

MR. J. BARK: Absolutely.

MR. J. BARK: Your Honor, there is a case in the United States Supreme Court a couple of weeks ago where the Court decided that a lawyer could not represent two parties and I am not involved in that case. I am only bringing it in general for your Honor's information. The Court indicated that as long as the lawyer is not acting as that counsel, and being one of the parties, that he can be controlling as far as the case goes. I do not know that the situation is any different here.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
VINCENT YANNI,

Petitioner, :

-against- :

UNITED STATES OF AMERICA,

Respondent. :
----- x

PRO SE 77 Civ. 2264

72 CR 810

OPINION

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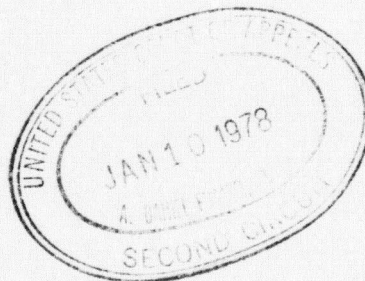
VINCENT YANNI

Pro Se

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MICROFILM

NOV 29 1977

HOWARD WEINFELD, D. J.

This is the second motion made by petitioner Vincent Yanni pursuant to 28 U.S.C., section 2255, to vacate his judgment of conviction which was entered more than five years ago. He was convicted with others of conspiracy to distribute narcotics, which the Court of Appeals, in affirming the conviction, described as "a large scale narcotics ring from suburban New York and New Jersey which supplied dealers and distributors in Harlem." (1) He was sentenced by former Judge Harold R. Tyler, Jr. to a term of eight years.

His first motion, made four years after his conviction, was based upon the ground that because of a head injury sustained a decade before trial he was incompetent to stand trial. This Court found, in denying the application, that it was "wholly without merit." (2) The Court of Appeals affirmed without opinion on April 7, 1977. Within a month thereafter petitioner filed the instant motion. This time he seeks to vacate his conviction on the ground that he was

(1) United States v. Manfredi, 468 F.2d 583, 590 (2d Cir. 1973), cert. denied, 417 U.S. 936 (1974).

(2) Yanni v. United States, 420 F. Supp. 930 (S.D.N.Y. 1976).

unconstitutionally denied effective assistance of counsel based upon an alleged conflict of interest because his attorney also represented at the trial another defendant, Anthony Colangelo.

After a careful review of the record of over 3000 pages of minutes, from the suppression hearing through the conclusion of the trial, the Court finds that this motion, like the prior one, is without merit and that petitioner's allegations do not require a hearing.

Yanni was one of thirteen original defendants who were charged with membership in the conspiracy extending over a two-year period and involving transactions totalling millions of dollars. The government's proof established that petitioner and others, including one codefendant Colangelo, were distributors and relied upon Joseph LaCosa, a major figure in the conspiracy, for their supply of narcotics. Yanni and Colangelo were convicted primarily on the basis of wiretapped conversations that each separately had with LaCosa. In the instance of Yanni, there were five such intercepted calls; evidence was also offered that LaCosa was seen leaving Yanni's home with a box which the government contended contained cash received from Yanni for the purchase of heroin. In the instance

of Colangelo, the proof against him was primarily one wire-tapped call and one call placed by an undercover agent pretending to be a narcotics buyer. Neither defendant challenged the identification of his voice.

The government's case against Yanni in large measure rested upon the use of the word "shirts" in the wire-tapped conversations, and as against Colangelo it was based upon the use of the word "pants" in his telephone conversation with LaCosa. The government contended that "shirts" was a code word for heroin and "pants" was a code word for cocaine. Neither defendant testified. The thrust of the defense advanced during the cross-examination of government witnesses and in summation was that the words were innocently used in their ordinary sense, whereas the government contended they described illicit transactions. Other than the fact that Yanni and Colangelo made separate telephone calls to LaCosa, who was the principal supplier of narcotics to distributors, no evidence in the entire case in any respect related petitioner and Colangelo.

Petitioner contends that he was denied a constitutionally adequate trial in that Judge Tyler failed to question the defendants concerning their joint representation by Lewis

(3) Alperin, and that such an inquiry would have established that Yanni's interests were in conflict with those of his co-defendant Colangelo. Yanni alleges that he was prejudiced by the joint representation as follows: that his counsel, Lewis Alperin, devoted more time to the defense of Colangelo; that he was dissuaded from taking the stand on his own behalf by Alperin because he, according to Yanni, feared that Yanni's "testimony may develop so as to disclose matters which would be harmful to [Colangelo]"; and that because he did not take the stand, he was "unable to present to the jury facts that would tend to exculpate him" or "his 15 year work record and other matters which would have enhanced his credibility"

The government asserts that Yanni in no respect was prejudiced by Alperin's representation of petitioner and Colangelo. It contends that the evidence demonstrated that the two defendants were involved in different aspects of the conspiracy, that their paths did not cross, and that no evidence was presented at the trial to indicate that they acted

(3) Yanni also alleges that he was not informed of the joint representation until the day of the trial. This claim is contradicted by the minutes at the July 13, 1972 arraignment on a superseding indictment. At that time, one month prior to the trial, Alperin appeared as attorney for both Colangelo and Yanni, and the transcript indicates that both of his clients were present.

together, that they knew one another, or that the participation of each in the conspiracy was such so that joint representation in the slightest degree could produce a conflict of interest. Moreover, the government emphasizes that before the trial it initially, and on its own, raised the issue of possible conflict before the Court, following which Alperin wrote to Judge Tyler, wherein he noted his joint role and stated:

I have advised both of my clients that the United States Attorney has stated that there is a possibility of a conflict unless each defendant has a separate lawyer.[4] Both of my clients have stated that there is no possible connection between them and they know of no conflict. Therefore, they wish me to continue to represent both of them.

[4] The Assistant United States Attorney made the statement referred to by counsel at a pretrial conference before Judge Tyler on June 7, 1972. The Court did not decide the issue at that time. Alperin's letter to the Court quoted in text was written one week after the Assistant brought the matter to the Court's attention.

Alperin also has submitted an affidavit in the present proceeding wherein he swears that "At the time of writing the letter to Judge Tyler, I reviewed the situation with my clients, and we came to the conclusion that there was no conflict of interest. Up to and including the conclusion of the trial, no factors arose which changed my opinion."

Yanni challenges the veracity of Alperin's statements, alleging that counsel never consulted him concerning the issue of joint representation. He also submits codefendant Colangelo's affidavit that "at no time prior to the aforementioned [sic] trial did I discuss the dangers of joint representation with Mr. Lewis Alperin." Because the Court finds no prejudice from the joint representation, it need not resolve this factual dispute. Moreover, it is significant that petitioner is silent as to what he would have testified to with respect to the basic testimony of his telephone conversations with LaCosa had he not been "dissuaded" from taking the stand, and how any such testimony would have been in conflict with the defense of Colangelo.

The rule in this Circuit is clear that for a court to vacate a conviction on the ground of joint representation, the petitioner must demonstrate "some specific instance of

prejudice, some real conflict of interest, resulting from a
(5)
joint representation." As established by United States

(6)
v. Alberti, a trial court is required, when confronted with
joint representation, to conduct a hearing to determine

whether there exists a conflict of interest with regard to defendant's counsel such that the defendant will be prevented from receiving advice and assistance sufficient to afford him the quality of representation guaranteed by the sixth amendment. In addition, the trial judge should see that the defendant is fully advised of the facts underlying the potential conflict and is given an opportunity to express his or her views. (7)

If no such inquiry occurred at the time of trial, the govern-
(8)
ment bears the burden of proving no prejudice. The govern-
ment here has acknowledged and assumed that burden.

Alberti was decided subsequent to Yanni's conviction.

(5) United States v. Carrigan, 543 F.2d 1053, 1055 (2d Cir. 1976) (citing cases).

(6) 470 F.2d 878, 881-82 (2d Cir. 1972), cert. denied, 411 U.S. 919 (1973).

(7) Id. at 382. See United States v. Carrigan, 543 F.2d 1053, 1055 (2d Cir. 1976); United States v. Mari, 526 F.2d 117, 119 (2d Cir. 1975), cert. denied, 429 U.S. 941 (1976); United States v. DeBerry, 487 F.2d 448, 452 (2d Cir. 1973).

(8) United States v. Carrigan, 543 F.2d 1053, 1056 (2d Cir. 1976).

However, this Court need not reach the question of whether Alberti should be applied retroactively, as petitioner would have it do. Even after Alberti and its progeny, it is still the rule that the defendant must have been prejudiced by the joint representation. (9) The Court finds that the government has demonstrated and the record reflects beyond peradventure that no prejudice occurred.

A major danger of joint representation arises when defense counsel is "inevitably thrust in the role of representing two men who had conflicting versions of their participation in the crime charged." (10) This is simply not the case here. The defendant's defenses were not inconsistent. Since the bases of the convictions were separate telephone conversations, defense counsel argued on behalf of each defendant that the references to "shirts" and "pants" were innocent statements concerning wearing apparel. Counsel also questioned the accuracy of the agents' testimony in regard to the telephone calls. Other

(9) See United States v. Carrigan, 543 F.2d 1053, 1055-56 (2d Cir. 1976); United States v. Vowterras, 500 F.2d 1210, 1211 (2d Cir.), cert. denied, 419 U.S. 1069 (1974); United States v. DeBerry, 487 F.2d 448, 452-53 (2d Cir. 1973).

(10) United States v. Carrigan, 543 F.2d 1053, 1057 (2d Cir. 1976).

than the fact that each made separate calls to LaCosa, no evidence in the case related petitioner to Colangelo in any respect. Nor did the calls of one relate to any transaction that the other was negotiating with LaCosa; each transaction was separate and independent. A careful review of the massive record indicates no evidence that linked the two defendants in any way, save for the fact that each separately dealt with LaCosa by telephone. (11) There is not the slightest basis for petitioner's contention that the defense of one could have implicated the other. Indeed petitioner has not suggested any instance in which a potential conflict existed or could have arisen.

Yanni further alleges that his counsel persuaded him not to take the stand because of the likelihood that Yanni's testimony would have damaged Colangelo's defense. Yanni's only support for this allegation is a reference to the record which indicates that Alperin at one point told the

(11) The government contends that the defendants were dealing in entirely separate aspects of the conspiracy: Yanni dealt in "shirts" - heroin - and Colangelo in "pants" - cocaine. This contention is not borne out by the record since evidence was presented by Agent Siegel's testimony that he called Colangelo and told him that he (Siegel) had "two shirts to deliver if he [Colangelo] wanted them." T.R. at 1626.

Court: "I discussed it, to be frank, placing my client on the stand and I discussed the problems he would have" (12)

Yanni claims that this comment demonstrates that he was dissuaded from taking the stand because of the effect that it would have on Colangelo's defense. This is a distortion of the record. The comment by Alperin was made during a suppression hearing prior to the trial when the Court was attempting to determine the impact of current pretrial publicity which referred to the murder of two nephews of a co-defendant, one of whom was also a codefendant with petitioner. (13)

The discussion is set out in full in the margin. It is

(12) Transcript of the suppression hearing (August 21, 1972) at 635.

- (13) [The Court]: Now, gentlemen, over the weekend so far as I know, but I must confess I didn't read the papers that carefully I am sure, but I know of no publicity whatever concerning the publicity that you all brought to my attention at various times last week.
- Is there anything about that now that you have to tell me?
- MR. BOBICK: Your Honor, we served subpoenas on--
- THE COURT: We will get to that in a moment. Is there anything else in the papers?
- MR. ALPERIN: There was a big story about organized crime and what the New York City Police Department is going to do with people mentioning--
- THE COURT: I am talking about this case.
- MR. ALPERIN: That is my whole point, I discussed it, to be frank, placing my client on the stand and I discussed the problems that he would have --
- THE COURT: Please, I don't want to be privy to any conversations with your client. I am only trying to ascertain was there any article dealing with this case which came out on Friday evening, all day Saturday or all day Sunday?
- MR. GREENBERG: Not in specific terms.

clear from the context that Alperin was not referring to any difficulty that one defendant taking the stand might place on the other; rather, he was referring to his concern about the prejudicial impact of the recent publicity of the two murders as related to an underworld war for drug business. (14) The Court finds implausible the suggestion that Yanni's testimony could have damaged Colangelo's defense, and petitioner presents the Court with no set of facts to support the claim. (15)

Nor does the record support Yanni's allegation that defense counsel did not adequately represent him because he (Alperin) was more concerned with Colangelo's defense. Alperin undertook a thorough cross-examination of the witnesses who testified against Yanni and devoted equal attention to Yanni's

(14) See *United States v. Manfredi*, 488 F.2d 588, 603 (2d Cir. 1973), cert. denied, 417 U.S. 936 (1974).

(15) The Court is not unaware that the difficult question of whether or not a defendant should take the stand is made far more difficult in a joint representation situation. See *United States v. Carrigan*, 543 F.2d 1053, 1056 (2d Cir. 1976); *Morgan v. United States*, 396 F.2d 110, 114 (2d Cir. 1968). But, as this Circuit has noted:

[w]hen a trial culminates in a verdict of guilty the temptation is great for a defendant, armed with hindsight, to claim that his lawyer's strategy in not permitting him to run the cross-examination gauntlet was motivated by a conflict of interest. . . . [I]n the absence of objective evidence of corroboratory circumstances, such post-trial claims must be viewed with some suspicion,"
United States v. Wisniewski, 478 F.2d 274, 284 (2d Cir. 1973).

defense in his opening and closing remarks. Indeed, the record demonstrates that Alperin took particular interest in Yanni: during the trial Yanni experienced several seizures. Alperin personally escorted Yanni to the examining physician's office and actively pursued the matter of Yanni's health thereafter. (17)

The record does not support a finding that Alperin favored the defense of Colangelo over Yanni -- to the contrary, it demonstrates competent and zealous representation of each. This is not a case, typical in the situation of joint representation, where counsel argues the innocence of one defendant by placing the blame on the other. (18)

In sum, petitioner has "done no more than suggest a theoretical conflict of interest and [has] pointed to no specific prejudice" in this case. (19) The Court is persuaded

(16) See T.R. at 33-37, 2631-50. Alperin did call one witness in Colangelo's defense while he called none on behalf of Yanni. However, this appeared to be a tactical decision rather than any bias on the part of counsel in favor of the defense of Colangelo.

(17) See T.R. at 694-703, 1506-1514.

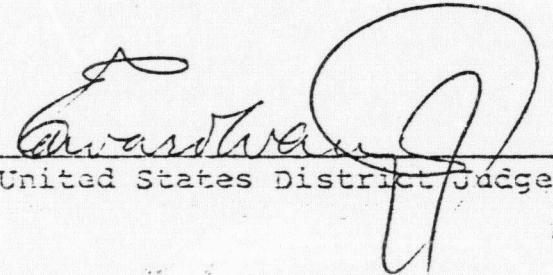
(18) Cf. *United States v. DeBerry*, 487 F.2d 448, 453 (2d Cir. 1973); *Mone v. Robinson*, 430 F. Supp. 481, 487 (D. Conn. 1977).

(19) *United States v. Lovano*, 420 F.2d 769, 774 (2d Cir.), cert. denied, 397 U.S. 1071 (1970).

beyond peradventure of doubt that Yanni's conviction was not influenced in any respect by the fact of joint representation; there is no basis for any claim that Alperin's representation of Colangelo in any way militated against a vigorous and competent defense of petitioner. The government has abundantly established that no prejudice occurred by reason of such representation.

The petition is denied.

Dated: New York, N. Y.
November 29, 1977


United States District Judge

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U.S.:

vs.

John H. Walker, Jr. AUSA.

Defendants

Page 2 of this docket sheet

12/19

For Defendant:

(7) Goldberger, Feldman & Breitbart
401 B'way, NYC 10013
tele: 431-4150.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	11/3/72	J. Manfredo (11/6/72)	ST —	
J.S. 3 mailed 1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-1047-1048-1049-1050-1051-1052-1053-1054-1055-1056-1057-1058-1059-1060-1061-1062-1063-1064-1065-1066-1067-1068-1069-1070-1071-1072-1073-1074-1075-1076-1077-1078-1079-1080-1081-1082-1083-1084-1085-1086-1087-1088-1089-1090-1091-1092-1093-1094-1095-1096-1097-1098-1099-1100-1101-1102-1103-1104-1105-1106-1107-1108-1109-1110-1111-1112-1113-1114-1115-1116-1117-1118-1119-1120-1121-1122-1123-1124-1125-1126-1127-1128-1129-1130-1131-1132-1133-1134-1135-1136-1137-1138-1139-1140-1141-1142-1143-1144-1145-1146-1147-1148-1149-1150-1151-1152-1153-1154-1155-1156-1157-1158-1159-1160-1161-1162-1163-1164-1165-1166-1167-1168-1169-1170-1171-1172-1173-1174-1175-1176-1177-1178-1179-1180-1181-1182-1183-1184-1185-1186-1187-1188-1189-1190-1191-1192-1193-1194-1195-1196-1197-1198-1199-1200-1201-1202-1203-1204-1205-1206-1207-1208-1209-1210-1211-1212-1213-1214-1215-1216-1217-1218-1219-1220-1221-1222-1223-1224-1225-1226-1227-1228-1229-1230-1231-1232-1233-1234-1235-1236-1237-1238-1239-1240-1241-1242-1243-1244-1245-1246-1247-1248-1249-1250-1251-1252-1253-1254-1255-1256-1257-1258-1259-1260-1261-1262-1263-1264-1265-1266-1267-1268-1269-1270-1271-1272-1273-1274-1275-1276-1277-1278-1279-1280-1281-1282-1283-1284-1285-1286-1287-1288-1289-1290-1291-1292-1293-1294-1295-1296-1297-1298-1299-1300-1301-1302-1303-1304-1305-1306-1307-1308-1309-1310-1311-1312-1313-1314-1315-1316-1317-1318-1319-1320-1321-1322-1323-1324-1325-1326-1327-1328-1329-1330-1331-1332-1333-1334-1335-1336-1337-1338-1339-1340-1341-1342-1343-1344-1345-1346-1347-1348-1349-1350-1351-1352-1353-1354-1355-1356-1357-1358-1359-1360-1361-1362-1363-1364-1365-1366-1367-1368-1369-1370-1371-1372-1373-1374-1375-1376-1377-1378-1379-1380-1381-1382-1383-1384-1385-1386-1387-1388-1389-1390-1391-1392-1393-1394-1395-1396-1397-1398-1399-1400-1401-1402-1403-1404-1405-1406-1407-1408-1409-1410-1411-1412-1413-1414-1415-1416-1417-1418-1419-1420-1421-1422-1423-1424-1425-1426-1427-1428-1429-1430-1431-1432-1433-1434-1435-1436-1437-1438-1439-1440-1441-1442-1443-1444-1445-1446-1447-1448-1449-1450-1451-1452-1453-1454-1455-1456-1457-1458-1459-1460-1461-1462-1463-1464-1465-1466-1467-1468-1469-1470-1471-1472-1473-1474-1475-1476-1477-1478-1479-1480-1481-1482-1483-1484-1485-1486-1487-1488-1489-1490-1491-1492-1493-1494-1495-1496-1497-1498-1499-1500-1501-1502-1503-1504-1505-1506-1507-1508-1509-1510-1511-1512-1513-1514-1515-1516-1517-1518-1519-1520-1521-1522-1523-1524-1525-1526-1527-1528-1529-1530-1531-1532-1533-1534-1535-1536-1537-1538-1539-1540-1541-1542-1543-1544-1545-1546-1547-1548-1549-1550-1551-1552-1553-1554-1555-1556-1557-1558-1559-1560-1561-1562-1563-1564-1565-1566-1567-1568-1569-1570-1571-1572-1573-1574-1575-1576-1577-1578-1579-1580-1581-1582-1583-1584-1585-1586-1587-1588-1589-1590-1591-1592-1593-1594-1595-1596-1597-1598-1599-1600-1601-1602-1603-1604-1605-1606-1607-1608-1609-1610-1611-1612-1613-1614-1615-1616-1617-1618-1619-1620-1621-1622-1623-1624-1625-1626-1627-1628-1629-1630-1631-1632-1633-1634-1635-1636-1637-1638-1639-1640-1641-1642-1643-1644-1645-1646-1647-1648-1649-1650-1651-1652-1653-1654-1655-1656-1657-1658-1659-1660-1661-1662-1663-1664-1665-1666-1667-1668-1669-1670-1671-1672-1673-1674-1675-1676-1677-1678-1679-1680-1681-1682-1683-1684-1685-1686-1687-1688-1689-1690-1691-1692-1693-1694-1695-1696-1697-1698-1699-1700-1701-1702-1703-1704-1705-1706-1707-1708-1709-1710-1711-1712-1713-1714-1715-1716-1717-1718-1719-1720-1721-1722-1723-1724-1725-1726-1727-1728-1729-1730-1731-1732-1733-1734-1735-1736-1737-1738-1739-1740-1741-1742-1743-1744-1745-1746-1747-1748-1749-1750-1751-1752-1753-1754-1755-1756-1757-1758-1759-1760-1761-1762-1763-1764-1765-1766-1767-1768-1769-1770-1771-1772-1773-1774-1775-1776-1777-1778-1779-1780-1781-1782-1783-1784-1785-1786-1787-1788-1789-1790-1791-1792-1793-1794-1795-1796-1797-1798-1799-1800-1801-1802-1803-1804-1805-1806-1807-1808-1809-1810-1811-1812-1813-1814-1815-1816-1817-1818-1819-1820-1821-1822-1823-1824-1825-1826-1827-1828-1829-1830-1831-1832-1833-1834-1835-1836-1837-1838-1839-1840-1841-1842-1843-1844-1845-1846-1847-1848-1849-1850-1851-1852-1853-1854-1855-1856-1857-1858-1859-1860-1861-1862-1863-1864-1865-1866-1867-1868-1869-1870-1871-1872-1873-1874-1875-1876-1877-1878-1879-1880-1881-1882-1883-1884-1885-1886-1887-1888-1889-1890-1891-1892-1893-1894-1895-1896-1897-1898-1899-1900-1901-1902-1903-1904-1905-1906-1907-1908-1909-1910-1911-1912-1913-1914-1915-1916-1917-1918-1919-1920-1921-1922-1923-1924-1925-1926-1927-1928-1929-1930-1931-1932-1933-1934-1935-1936-1937-1938-1939-1940-1941-1942-1943-1944-1945-1946-1947-1948-1949-1950-1951-1952-1953-1954-1955-1956-1957-1958-1959-1960-1961-1962-1963-1964-1965-1966-1967-1968-1969-1970-1971-1972-1973-1974-1975-1976-1977-1978-1979-1980-1981-1982-1983-1984-1985-1986-1987-1988-1989-1990-1991-1992-1993-1994-1995-1996-1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-2509-2510-2511-2512-2513-2514-2515-2516-2517-2518-2519-2520-2521-2522-2523-2524-2525-2526-2527-2528-2529-2530-2531-2532-2533-2534-2535-2536-2537-2538-2539-2540-2541-2542-2543-2544-2545-2546-2547-2548-2549-2550-2551-					

PROCEEDINGS

Title of case
UNITED STATES OF AMERICA
VS.

✓ 1.	JOSEPH MAFFREDI	CL 11-3-72	ct. 1
✓ 2.	FRANK LA COSA	CL 11-3-72	ct. 1
✓ 3.	JOSEPH LA COSA, a/k/a "Duke"	CL 11-3-72	cts. 1, 2 & 3
✓ 4.	VINCENT VANNI, a/k/a "Butch"	CL 11-3-72	ct. 1
5.	PHILIP JOHN MAFFREDI, a/k/a "Little Philis"		cts. 1 & 4 OPEN
✓ 6.	TIMOTHY SCHPADER	CL 11-3-72	ct. 1
✓ 7.	JOSEPHINE SCHPADER	CL 11-3-72	ct. 1
✓ 8.	CHARLES CASSARELLA	CL 11-3-72	ct. 1
9.	ANTHONY COLANGELO, a/k/a "Tony Cole"	6	cts. 1 & 6, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
10.	DOMINICK TRINCHEPA	OPEN	ct. 1
11.	GEORGE DEL NEVO	OPEN	cts. 1, 5 & 6
✓ 12.	VINCENT D'AMICO	CL 1-30-75	ct. 1
✓ 13.	HOPACE IARBLE	CL 12-25-72	cts. 1 & 3
✓ 14.	WILLIAM IARBLE	CL 12-25-72	ct. 1
✓ 15.	THADDEUS BYRD	CL 12-25-72	ct. 1
✓ 16.	MELVIN CALVIN	CL 1-19-72	cts. 1 & 7
✓ 17.	MERIAN GRANT	CL 11-3-72	cts. 1 & 7
✓ 18.	ROBERT IAYO	CL 11-3-72	cts. 1
19.	JOHN DOE, a/k/a "Frank"		ct. 1
20.	JOHN ROA, a/k/a "Alex"		ct. 1
21.	ROBERT DOE, a/k/a "Lenny"		ct. 1

72 JOSEPH LA COSA - (Atty. present) Bail fixed at \$150,000.00 cash or surety on this indictment only. Deft. continued on bail posted in superceded indictment 72 CR 482 to July 20, 1972 at 12 noon at which time \$150,000.00 bail is to be posted to cover this indictment. -

TYLER, J.

DATE	PROCEEDINGS	F JL
7-21-72	JOSEPH LA COSA - (Atty. present) Application to reduce bail DENIED. Bail reduced to \$75,000.00 cash or surety. Deft. continued rounded in lieu of reduced bail. -- Tyler, J.	
7-21-72	JOSEPH LA COSA - Filed the following papers received from Magistrate Raby 1) Docket entry sheet 2) 20,000.00 surety bond.	
7-21-72	FRANK LA COSA - Filed the following papers received from Magistrate Raby 1) Docket entry sheet 2) \$10,000. surety bond 3) \$20,000. PRB	
7-21-72	HERMAN GRANT - Filed the following papers received from Magistrate Raby 1) Docket entry sheet 2) \$10,000. surety bond	
7-21-72	ROBERT MAYO - Filed the following papers received from Magistrate Raby 1) docket entry sheet 2) Crim. complaint and disposition sheet 3) Warrent of arrest 4) Bond of 4/3/72 5) Bond of 7-9-72	
7-21-72	TIMOTHY SCHRADER - Filed the following papers received from Magistrate Raby 1) Docket entry sheet 2) Crim. complaint and disposition sheet 3) Notice of appearance 4) Warrent of arrest 5) Temporary commitment 6) Appearance bonds (2) with anendatory endorsement	
7-21-72	Robert Mayo-filed memorandum of Judge Tyler, and letter attached of counsel for the deft. dated July 20 1972 raises. <u>inter alia</u> whether or not counsel should be furnished prior to trial with agents notes *** Counsel for the government is directed to respond to this application by July 28, 1972. So ordered Tyler, J. (m/NO(see file)	
7-27-72	Joseph LaCosa-Before: Judge Tyler. -Application by deft that bail (atty.Present) be reduced (further)-Denied Tyler, J.	
7-18-72	D. Trinchera-filed personal recognizance bond unsecured in the sum of Ten Thousand dollare.	
	George Del Nevo-filed personal recognizance bond unsecured in the sum of One thousand dollars. J. Livingston, Clk.	
	Anthony Colangelo-filed personal recognizance bond unsecured in the sum of Ten thousand dollars. J. Livingston, Clk.	
	Charles Cassarella-filed personal recognizance bond unsecured in the sum of One thousands dollars J. Livingston Clk	

9-5-72	Trial adjourned to 9-6-72.
9-6-72	Trial continued.
9-7-72	Trial continued.
9-11-72	Trial continued.
9-12-72	Trial continued.
9-13-72	Trial continued. Motion to dismiss counts 6 & 7 as to Grant and C Granted. Denied as to all others.
9-14-72	Trial continued.
9-19-72	Trial continued and concluded. Jury Verdict is as follows:
	Calvin - Not Guilty
	Joseph La Cosa- Guilty on counts 1, 2 & 3.
	Frank La Cosa - " " " 1
	Joseph Manfredi- " " " 1
	Vincent Yanni - " " " 1
	Timothy Schrader- " " " 1
	C. Cassarella - " " " 1
	A. Colangelo - " " " 1
	H. Grant - " " " 1
	R. Mayo - " " " 1
	Defts. J. Manfredi and Joseph La Cosa are remanded until date of
	Frank La Cosa bail increased to \$50,000.
	T. Schrader and Colangelo (both) bail increased to \$35,000.
	Grant and Mayo (both) increased to \$25,000.
	Yanni is increased to \$20,000.
	Cassarella is increased to \$15,000.
	Defendant have until noon on Sept. 22, 1972 to furnish new bail. A
	motions reserved to date of sentence. Pre-sentence investigation
	ordered for all defendants. Sentence on November 3, 1972.
	Tyler,
9-20-72	Manfredi, Joseph et al, - Filed Govt's bill of particulars.

- Over -

E.

- 9-21-72 H. Grant - defts. time to post bail is extended to Sep. 25-1972 at 4 P.M. with consent of Govt.
- R. Mayo - defts. time to post bail is extended to Sep. 25, 1972 at noon, with consent of Govt.
- C. Casarella - (Atty. not present) Deft. continued on present bail to 4 P.M. today at which time bail in amount of \$30,000.00 cash or surety is to be posted. -- Tyler, J.
- 9-22-72 R. Mayo - Filed order that upon consent of US time to post bail is extended to 12 o'clock noon, Sep. 25, 1972 -- Tyler, J.
- 9-26-72 Robert Mayo- atty not present- Deft's application for reduction of bail denied w/o prejudice to renewal by counsel. Deft Remanded in lieu of bail set by court at \$25,000 on sept.19,1972 Tyler, J.
- 9-26-72 Marble-Filed PRB in the amount of \$35,000
- 9-18-72 LaCosa- Filed remand dated 7-21-72.
- 9-22-72 *Mayo- Filed remand on Marble's return dtd. 9/22/72 and released on bail by Mag. Kelly on 10-2-72.*
- 9-26-72 JOSEPH LA COSA- Filed following papers received from U.S. Magistrate. Docket sheet, appearance bond.
- 9-26-72 Melvin Calvin-Filed following received from U.S. Magistrate. docket sheet, appearance bonds.
- 9-23-72 Joseph Manfredi (Atty. present) admits that he is the same Joseph Manfredi mentioned in the within information as being previously convicted and is a second federal narcotics offender. (endorsed on copy of 2nd offender information) --- Tyler, J.

--- continued on page 7 ---

DATE

PROCEEDINGS

11-3-72 JOSEPH MANFREDI - Filed Judgment (Atty. present) deft is committed to the custody of the Atty. Gen. for imprisonment for a period of THIRTY (30) YEARS. Deft. is fined TWENTY FIVE THOUSAND DOLLARS (\$25,000). Deft is to stand committed until fine is paid or he is otherwise discharged according to law. Pursuant to the provisions of Ti. 21, Section 841, U.S. Code, the deft is placed on Special Parole for a term of SIX (6) YEARS to commence upon expiration of confinement.... Tyler, J. Issued copies.

11-3-72 FRANK LA COSA - Filed Judgment (# 72,947) Atty. present, deft is committed to custody of the Atty. Gen. for imprisonment for a period of TEN (10) YEARS. Deft is fined FIFTEEN THOUSAND (\$15,000). Deft is to stand committed until fine is paid or he is otherwise discharged according to law. Pursuant to the provisions of Ti. 21, Section 841, U.S. Code, the deft is placed on Special Parole for a term of THREE (3) YEARS to commence upon expiration of confinement. Deft is cont'd on present bail to Nov. 6, 1972 at 4 pm., at which time present bail in the amount of FIFTY THOUSAND DOLLARS (\$50,000) is to be re-written and posted pending appeal. Tyler, J. Issued copies.

11-3-72 JOSEPH LA COSA - Filed Judgment (# 72,946) Atty. present, deft is committed to custody of the Atty. Gen. for imprisonment for a period of FIFTEEN (15) YEARS on count 1, THIRTY (30) YEARS on count 2 and FINED ONE HUNDRED THOUSAND (\$100,000). Deft is to stand committed until fine is paid or he is otherwise discharged according to law. Fifteen Years (15) on count 3. The sentence of imprisonment imposed on each of cts. 1 and 3 is to run concurrently with prison sentence imposed on count 2. Pursuant to the provisions of Ti. 21, Section 841, U.S. Code, the deft is placed on Special Parole for a term of THREE YEARS to commence upon expiration of confinement.... Tyler, J. Issued copies.

11-3-72 Joseph Manfredi - Filed notice of appeal to U.S.C.A. for the 2nd Circuit from judgment filed 11-3-72 (mailed copies to U.S. Atty, and clerks)

11-3-72 Joseph La Cosa, Frank La Cosa, Timothy Schrader and Charles C. Cassarella - joint Filed/notice of appeal to U.S.C.A. for the 2nd Circuit from judgments filed 11-3-72 (mailed copies to U.S. Atty. and clerks)

-- continued on page 8 --

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11-3-72 VINCENT YAMMI-Filed Judgment(Atty.present)deft is committed to the custody of the Atty.Gen.for imprisonment for a period of EIGHT(8)YEARS. Pursuant to the provisions of Ti.21, Section 841, U.S.Code, the deft is placed on Special Parole for a term of THREE YEARS to commence upon expiration of confinement. Deft is cont'd. on present bail to Nov.6, 1972 at 4 p.m., at which time present bail in the amt.of TWENTY THOUSAND DOLLARS is to be re-written and posted pending appeal....Tyler, J. Issued copies...

11-3-72 CHARLES CASSARELLA-Filed Judgment(Atty.present)deft is committed to the custody of the atty.gen.for imprisonment for a period of SIX(6)YEARS in a Jail type institution. Pursuant to the provisions of Ti.21,Section 841, U.S.C. the deft is placed on Special Parole for a term of THREE YEARS to commence upon expiration of confinement. Deft is cont'd on present bail to Nov.6,1972 at 4 p.m. at which time present bail in the amt.of \$30,000.is to be re-written and posted pending appeal.....Tyler, J. Issued copies...

11-3-72 ANTHONY COLANGELO-Filed Judgment(Atty.present)deft is committed to the custody of the Atty.Gen.for imprisonment for a period of ~~TEEN~~ TEN(10)YEARS on count 1. Pursuant to the provisions of Ti.21, Section 841, U.S.C. the deft is placed on Special Parole for a term of THREE YEARS to commence upon expiration of confinement. Deft is cont'd on present bail in the amount of THIRTY FIVE THOUSAND DOLLARS is to be re-written and posted pending appeal...Tyler, J. Issued copies.

11-3-72 HERMAN GRANT-Filed Judgment(Atty.present)deft is committed to the custody of the Atty.Gen.for imprisonment for a period of FIFTEEN(15)YEARS. Pursuant to the provisions of Ti.21, Section 841, U.S.Code, the deft is placed on Special Parole for a term of THREE YEARS to commence upon expiration of confinement. Deft is cont'd on present bail(\$25,000) to Nov.6,1972 at 4 P.M.at which time bail fixed in the amt.of THIRTY THOUSAND DOLLARS is to be posted pending appeal...Tyler, J.

11-3-72 ROBERT MAYO-Filed Judgment(Atty.present)deft is committed to the custody of the Atty.Gen. for imprisonment for a period of NINE YEARS in a jail type institution. Pursuant to the provisions of Ti.21,Section 841, U.S.Code, the deft is placed on Special Parole for a term of THREE YEARS to commence upon expiration of confinement. Deft is cont'd on present bail (\$15,000) to Nov.6, 1972 at 4 p.m. at which time bail fixed in the amt.of \$30,000.is to be posted pending appeal...Tyler, J. Issued copies.

(see page 9)

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11-3-72 ANTHONY COVADAR - Filed judgment, atty. present. Deft. is committed to the custody of the Atty. Gen. for imprisonment for a period of THREE YEARS. Pursuant to the provisions of Ti.21, Section 841, U.S.C. the deft. is placed on Special Parole for a term of THREE YEARS to commence upon expiration of confinement. Deft. is continued on present bail to Nov. 6, 1972 at 4 p.m., at which time present bail in the amount of \$35,000 is to be re-written and posted pending appeal.....Tyler, J.
----- Issued copies.....

11-3-72 ANTHONY COVADAR - Filed notice of appeal from judgment entered 11-3-72 to the U.S.C. for the 2nd Circuit (copies mailed to US Atty & def)

11-3-72 VINCENT YANNI - Filed notice of appeal to U.S.C.A. for the 2nd Circuit from judgment entered 11-3-72 (mailed copies to US Atty and deft.)

11-6-72 HERMAN GRANT - Filed notice of appeal to the U.S.C.A. for the 2nd Circuit from judgment entered 11-3-72 (mailed copies to US Atty and deft.)

11-6-72 ROBERT MAYO - Filed notice of appeal to the U.S.C.A. for the 2nd Circuit from judgment entered 11-3-72 (mailed notice to U.S. Atty. and deft.)

11-6-72 Vincent Yanni - Filed PRB secured in the amount of \$20,000.

11-10-72 R. Mayo - Filed the following papers received from Magistrate Raby:
docket entry sheet
appearance bonds.

11-10-72 F. La Cosa - Filed the following papers received from Magistrate Raby:
docket entry sheet
appearance bonds.

11-10-72 C. Cassarella - Filed the following papers received from Magistrate Raby:
docket entry sheet
appearance bonds

11-10-72 H. Grant - Filed the following papers received from Magistrate Raby:
docket entry sheet
appearance bonds

11-8-72 *Filed Transcript of record of proceedings, dated July 18, 1972.*

11-8-72 *Filed Transcript of record of proceedings, dated July 27, 1972.*

11-16-72 Filed transcript of record of proceedings dtd. 8-16-72

PROCEEDINGS

- 1-17-72 Filed Transcript of record of proceedings, dated Aug. 21, 22, 23, 24, 1972
- 1-17-72 Filed Transcript of record of proceedings, dated Aug. 28, 29, 30, 31, 1972
- 1-17-72 Filed Transcript of record of proceedings, dated Sept. 5, 6, 7, 11, 1972
- 1-17-72 Filed Transcript of record of proceedings, dated Sept. 12, 13, 14, 1972.
- 11-24-72 LaCosa & Frank LaCosa, Schrader and Cassarella-Filed notice that the appeal has been certified and transmitted to the U.S.C.A.
- 12-15-72 LaCosa - Filed remand dated 9-19-72.
- 12-15-72 Schrader - Filed remand dated 9-19-72.
- 1-10-73 Mayo - Filed Commitment & entered return. Deft. Delivered to the Detention Hdqtrs NYC 11-8
- 12-28-72 HORACE MARBLE-Filed Judgment(Atty.present)deft is committed for imprisonment for a period of TWO YEARS. Pursuant to the provisions of Ti.21, Section 841, United States Code, the deft is placed on Special Parole for a term of THREE YEARS to commence upon expiration of confinement. Count 3 is dismissed on motion of deft's counsel with consent of the Govt...Deft is remanded.....Tyler, J.
- 12-28-72 William Marble - Filed Judgment(atty.present)It is adjudged that the imposition of a prison sentence is suspended and the deft is placed on Probation for a period of THREE(3)YEARS subject to the standing probation order of this Court.....Tyler, J.
- 1-10-73 THADDEUS BYRD - Filed Judgment(atty.present)the imposition of a prison sentence is suspended and the deft is placed on probation for a period of THREE YEARS subject to the standing probation order of this Court....Tyler, J.
- 1-22-73 Mayo-- Filed motion for bail reduction pending appeal from \$30,000 to \$1
- 1-22-73 Filed memo endorsed on motion for bail reduction dtd 1-22-73, Bail pending appeal is denied. (see Memo) Tyler, J.
- 1-30-73 HERMAN GRANT- Filed stipulation and order that because defendant is deceased, the appeal from judgment of conviction is withdrawn and is further ordered that the bail presently posted for said defendant Herman Grant be exonerated. -- Tyler, J.
- 2-15-73 Marble-Filed COPY I CJA TO THE ADM. OFF. MAILED DTD. 1-31-73.
- 2-26-73 Filed Commitment & entered return. Deft. Delivered to the Sheriff's Office Minn. 1-15-

J.

Cont'd Page #11

DATE

PROCEEDINGS

3-16-73 JOSEPH MANFREDI-Filed true copy of J & C with Marshal's return-Deft. delivered to Warden, Federal Detention HQRTS, N.Y.C.

3-16-73 JOSEPH LA COSA-Filed true copy of J & C with Marshal return-Deft. delivered on 11-3-72 to Warden, Federal Detention HQRTS, N.Y.C.

5-7-73 Manfredi, La Cosa, Frank La Cosa, Yanni, Schrader, Cassarella, Colagrand, Mayo- Filed true copy of C.A. order dismissing the appeal

6-21-73 WM. MARBLE-Filed the following papers rec'd from the Magistrate (72-1121)
Docket Sheet-7-14-72 Deft. arrested Bail fixed R.O.R.

Indictment Warrant S.D.N.Y.

Disposition Sheet.

Appointment of Counsel CJA dtd. 7-14-72 appointing Legal Aid.

7-3-73 Anthony Colangelo- filed copy of judgment and commitment and marshal's return, deft committed 5-30-73.

10-30-73 Applicat on by deft D'Amico for reduction of bail set by Magistrate (\$10,000.) is denied. Tyler, J.

2/15/74 Filed true copy of mandate and opinion of the U.S. C.A. that the judgments of the dist. court are affirmed. Mailed notices.

3/15/74 V. YANNI Filed copy of judgment and commitment transferred to FDH 3/11/74

3/22/74 T. SCHRADER Filed copy of judgment and commitment transferred to FDH 3/11/74

3/22/74 F. LA. COSTA Filed copy of judgment and commitment transferred to FDH 3/11/74

3/22/74 CASSARELLA Filed copy of judgment and commitment transferred to FDH 3/11/74

3/25/74 Filed ORDER that the action is transferred to the suspense docket of the court subject to reinstatement on the calendar of the undersigned upon the filing of a notice of readiness for trial, etc. Tyler, J. mn

- 6/9/74 Filed true copy of order of the Supreme Court of the United States of America that the petition of Robert Mayo for a writ of certiorari to the U.S. Court of Appeals 2nd Cir. is denied.
(Mr. Justice Douglas would grant certiorari 6/3/74) mn
- 6/9/74 Filed true copy of order of the Supreme Court of the United States of America that the petition of Frank La Cosa for a writ of certiorari to the U.S. Court of Appeals 2nd Cir. is denied.
(Mr. Justice Douglas would grant certiorari 6/3/74) mn
- 6/10/74 Filed true copy of order of the Supreme Court of the United States of America that the petition of Joseph Manfredi for a writ of certiorari to the U.S. Court of Appeals 2nd Cir. is denied.
(Mr. Justice Douglas would grant certiorari 6/3/74) mn
- 7/1/74 Filed Govt.'s affdvt for writ of habeas corpus ad pros. for deft. V. D'Amico. Ret. 7/2/74.
- 7/2/74 Vincent D'Amico (attys present) produced on writ. Deft. pleads not guilty to indictment. All motions to be filed by 8/14/74. Writ satisfied. Tyler, J.
- 7/11/74 Vincent Yanni, Frank La Cosa, Charles Cassarella, Timothy Schrader - defts surrender for service of sentence.
- 7/30/74 Filed affdvt. for writ of habeas corpus ad pros. for Vincent D'Amico. Writ satisfied 7/2/74 Tyler, J.
- 8/6/74 Filed memo-ord. on application of V. Yanni for reduction of sentence. Application denied. Tyler, J. mn pro-se
- 8-15-74 Filed deft's (Vincent Yanni) affidavit & notice of motion for a , modification of sentence.
- 8-19-74 Filed Memo-endorsed on deft's (Vincent Yanni) motion filed 8-15-74:
Motion for reduction of sentence is denied. Aware as I am of the, plight of deft's wife & children, I was so at the time of sentence. , moreover, I cannot agree with deft. that his role in this serious, crime was minimal. So ordered. Tyler, J.

8-23-74 U.S.A. vs. J. La Cosa, Jr. in opposition to motion of Joseph LaCosa to reduce sentence.
 8-29-74 Filed transcript of record of proceedings, dated 7/17/74-7-19-74
 8-29-74 7/27/74
 9/5/74 Joseph LaCosa- filed notice of motion for reduction of sentence under Rule 35 FRCP and 28 USC 2255.
 9/5/74 Filed memo-end. on application for reddtion of sentence and motion for reduction of sentence of deft. J. LaCosa- denied. Tyler, J. mn
 9/18/74 Filed Govt.'s affdvt. in opposition to the motion of deft. Josephine Schrader to dismiss the indictment.
 9/23/74 Filed deft. Robert Mayo's notice of motion re: reduction of sentence ret: 9/27/74.
 9/23/74 Filed deft. J. Manfredi's notice of motion re: reduction of sentence.
 9/26/74 Filed Robert Mayo's supplemental affdvt. in support of motion to reduce sentence.
 9/19/74 Pre-trial conference held. Tyler, J.
 9/27/74 Filed suppl. affdvt. of Walter B. Kyle and Wm. Springer, Jr. in support of motion for reduction of sentence.
 10/4/74 Filed defts' motion for reduction of sentence under Rule 35 F.R. Cr. P.
 10/8/74 Filed Govt.'s affdvt. in opposition to Mayo's motion for a reduction of sentence.
 10/15/74 Filed Govt.'s affdvt. in opposition to deft. Joseph Manfredi's motion to reduce his sentence.
 10/17/74 Filed Consent Order that the atty. for Josephine Schrader is substituted. Tyler, J.
 10/11/74 Filed ORDER that the \$20,000. bail posted on indictment 72 Cr. and \$75,000. bail posted on indictment 72 Cr. 810 on behalf of Joseph LaCosa be exonerated. Tyler, J. mn
 10/30/74 Filed Govt.'s affdvt. in opposition to the motions to reduce sentence of F. La Cosa, Schrader, Cassarella and Yanni.
 10/30/74 Filed OPINION # 41379- ...motions of defts F. La Cosa, Schrader, Cassarella and Yanni are denied. Tyler, J. mn
 11/12/74 Filed transcript of record of proceedings, dated 9/20/74

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1/7/74 Filed order that the \$10,000. bail paid in behalf of Timothy Schrader be memorialized and the same be returned to Mary J. Buonanno by the Clerk of the Court. Tyler, J. mn (also in 72 Cr. 810) 12-1-3033.

1/27/74 Filed memo-end. on letter of deft. Cassarella- treated as a motion to reduce sentence, denied. Tyler, J. mn

1/7/75 Filed Govt.'s affdvt. for writ of habeas corpus ad pros. for Vincent D'Amico. ret. 1/10/75.

1/30/75 VINCENT D'AMICO (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of SIX (6) YEARS pursuant to T. 18, U.S. Code, Section 4208(a)(2) to run concurrently with the sentence imposed by Judge Duffy of this Court in 72 Cr. 1099. Deft. is to be credited for time served since 10/4/73. Tyler, J. issued all copies.

1/30/75 JOSEPHINE SCHRADER (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of TWO (2) YEARS. Imposition of sentence is suspended and deft. is placed on Probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court. Tyler, J. issued all copies.

02/13/75 VINCENT D'Amico Filed commitment & sentenced order, B.A. delivered to *executed* by forwarding a copy to Warden, F.C.I. Danbury, Conn.

02-18-75 Filed memo-end. on letter from C. Cassarella to Judge Tyler ...treated as a motion for reduction of sentence, denied. Tyler, J. mn

02-18-75 Filed memo-end. on letter from F. LaCosa to Judge Tyler. ...treated as a motion for reduction of sentence, denied. Tyler, J. mn

02-25-75 Filed writ of habeas corpus ad pros. for Vincent D'Amico. Writ satisfied 02-23-75 Frankel, J.

03-07-75 Filed transcript of proceedings, dated Jan. 23, 1975.

03-10-75 Filed transcript of proceedings, dated Jan. 30, 1975.

5-05-75 Filed deft. Robert Mayo's motion for trial transcript.

08-04-75 Case reassigned to Judge Weinfeld for all purposes. Stewart, J.

08-13-75 Filed letter from deft. FRANK LA COSA dated Aug. 4, 1975 re: modification of sentence.

(see pg. 15)

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DATE	PROCEEDINGS
09-25-75	ROBERT MAYO--Filed letter from deft. dated (undated) re: reduction of sentence with memo end.---Motion for modification of sentence under 18 USC 4208(a)(2), etc. as indicated. Weinfeld, J. (to pro se for notices)
09-25-75	ROBERT MAYO--Filed memo end. on defts. motion filed on May 5, 1975 trial transcript--- Motion denied, etc. as indicated. Weinfeld (to pro se for notices)
10-06-75	CHARLES CASSARELLO--Filed letter from deft. dated June 20, 1975 re: reduction of sentence with memo end.---Over 120-days having passed since the dismissal of the appeal in this case, I am without jurisdiction to reduce the sentence. Accordingly, the attached motion is denied. So ordered, Duffy, J. (to pro se for notices)
4-28-76	V. D'AMICO--Filed the following papers rec. from the office of Mag. docket sheet; complaint filed on 4/11/72; warrant of arrest dated 4/11/72 (deft. arraigned on 10/11/73 and in custody)
6-1-76	Filed govts. affdt. of Don Buchwald in opposition to deft. FRANK LA COSA's motion to have his sentence set aside has having been illegally imposed.
5-11-76	Filed transcript dtd. 11/3/72.
3-24-76	Filed transcript dtd. 11/3/72.
8-7-6-76	Filed temp. commitment dtd. 10/8/74 as to deft. JOHN DOE et/n-- Exma Frank Bachetti.
7-30-76	Filed true copy of order of USCA as to deft. ROBERT MAYO--ORDERED that leave to proceed in forma pauperis is granted and the petition for mandamus is denied. (Judges Milligan, Oakes and Timbers) Clerk
10-13-76	Filed defts. Joseph Manfredi, notice of motion for an order allowing the undersigned, as attorney for deft. herein, to be able to obtain copies of any and all interceptions of conversations by the Govt. pertaining to and any and all persons charged in the above captioned matter.
11-17-76	Filed Govt's Affidvt. for an order permitting his present counsel to listen to and obtain copies of "any and all interceptions of conversations by the Government pertaining to any and all persons charged in the above-captioned matter.
11-17-76	Filed Memo-End on defts. Joseph Manfredi, dated 11-13-76 The within motion is hereby withdrawn... So Ordered... WEINFELD, J. m/n
2-24-77	SCHRADER, TIMOTHY- Filed petitioners motion to amend complaint (77 Title 28 USC 2255)
3-15-77	SCHRADER, TIMOTHY- Filed memo end on motion filed 2-24-77 Since Petitioner in custody of the Warden at Lewisburg, this Court is without jurisdiction. Petitioner's motion to change original filing to a 28;2255 motion Weinfeld, J. M/N & copy to Petitioner

PG 14

DATE

PROCEEDINGS

Page 14
Judge at 17

- 8-77 YANNI- Filed motion under 28:2255 to vacate sentence. (see 77 CIV 2264)
- 8-77 YANNI- Filed notice of referral to Judge Winfield
- 8-77 YANNI- Filed affid & notice of motion for bail
- 10-77 YANNI- Filed memorandum on letter from deft to Clerk of Court dated 8-3-77- Petitioner's application to file traverse is granted to the extent the same may be filed thirty days from Sept 6, 1977....WEINFELD, J. (Copy mailed to deft)
- 12-77 YANNI- The application for bail pending the determination of the motion to vacate the Judgment of conviction is DENIED....weinfeld, J. (copy mailed to deft) (US Atty notified)
- 5-77 YANNI- Filed Traverse to Govt's answer.
- 6-77 YANNI- Filed memo end on letter dated 9-8-77 for reconsideration of bail- The within motion for reconsideration is DENIED....WEINFELD, J. (copy mailed to deft)
(IN CHAMBER)
- 10-31-77 JOSEPH MANFREDI- Filed notice of motion to set aside the verdict & grant a new trial on the ground of newly discovered evidence
- 10-31-77 JOSEPH MANFREDI- Filed memorandum of deft in support of motion to set aside verdict and grant a new trial on the ground of newly discovered evidence
- 11-29-77 YANNI- Filed answer of the US to deft's motion to vacate sentence
- 11-29-77 YANNI- Filed Govt's affid - Deft's application for bail should be denied
- 11-29-77 YANNI- - Filed Govt's affid- The Govt requests that its time to answer deft's petition be extended to a date two weeks after it has received the relevant transcripts from the court reporters
- 11-29-77 YANNI- Filed Govt's affid -this Court received deft's motion under Section 2255 of Title 28 U.S. Code on May 5, 1977 Upon receipt of the motion I ordered from the reporters the transcript of those early conferences. I believe that the transcript is now available & the Govt should be able to answer the motion by June 20, 1977 affids are necessary from the attys active on the case in 1972. If any extension beyond June 20, 1977 is necessary the Court & deft will be informed in advance of that date (received in unit 11-29-77)
- 11-29-77 YANNI- Filed affirmation of atty: Lewis E. Alperin
- 11-29-77 YANNI- Filed affid & notice of motion pursuant to 28 USC 2255
- 11-29-77 YANNI- Filed deft's petition II for bail
- 11-29-77 YANNI- Filed OPINION # 46599 & ORDER This is the second motion by petitioner to vacate his judgment of conviction entered more than five years ago. His first motion made four years ago denied that application for the Court found that it was wholly without merit which the Court of appeals affirmed. For the reasons stated the petition is DENIEDWEINFELD, J. (Mailed copy to deft) (US Atty notified) also entered in 77 CIVIL 2264) (copy of opinion filed in 77 CIVIL 2264)
- 12-1-77 MANFREDI- Filed Stipulation of adj of hearing of motion from 11-22-77 to 12-20-77
.....WEINFELD, J.
- 12-16-77 MANFREDI- Filed Affid of Francis E. White Special Agent for the Drug Enforc. Administ.
- 12-16-77 MANFREDI- Filed affid of Gerald A. Feffer former AUSA for the SDNY
- 12-16-77 MANFREDI- Filed Affid of John M. Walker AUSA for the SDNY from 1970 to 1975
- 12-16-77 MANFREDI- Filed affid of Robert N. Schwartz AUSA for SDNY in response to the petitioners motion to set aside the verdict & for a new trial
- 12-16-77 MANFREDI- Filed Memorandum of law in opposition to petitioners motion for a hearing pursuant to 28:2255

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DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA			
	(Document No.)	(a)	(b)	(c)	(d)
12-19-77	YANNI- Filed notice of appeal from the order entered 11-29-77 (Mailed notice to deft Vincent Yanni Reg #80452-158 Pembroke Station, Danbury Conn 06810) (US Atty notified)				

A TRUE COPY
RAYMOND E. BURGHARDT, Clerk

[Signature]